

## **PROFFERS**

### **ELEVEN OAKS LLC RZ 2012-BR-014**

**December 18, 2012**

Pursuant to Section 15.2-2303(A) of the Code of Virginia (1950, as amended) and Section 18-204 of the Zoning Ordinance of Fairfax County (1978, as amended), the property owner and Applicant, for themselves and their successors and/or assigns (hereinafter collectively referred to as the "Applicant"), hereby proffer that the development of the parcels under consideration and shown on the Fairfax County 2012 tax maps as Tax Map 57-4 ((1)) 6 (the "Property") shall be in accordance with the following conditions if, and only if, Rezoning application 2012-BR-014 (this "Rezoning") is granted. In a separate application, the Applicant has proposed the rezoning and development of land adjacent to the Property located in the City of Fairfax and identified as Tax Map 57-2 ((2)) 3 through 6 (the "City Application Property"). While it is the intent of the Applicant to develop the Property and the City Application Property as a unified development, it shall be understood that these Proffers relate solely to the Property.

#### **1. Development Plan.**

- A. Development of the Property shall be in substantial conformance with the Conceptual Development Plan/Final Development Plan (CDP/FDP) prepared by Christopher Consultants, dated April 12, 2012, as amended through November 20, 2012. A maximum of 37 dwelling units shall be constructed on the Property.
- B. The proffered portion of the CDP shall be the entire plan shown on Sheet 6 relative to the points of access, the maximum number and type of dwelling units, the amount and general location of open space, and the general location and arrangement of the buildings. The Applicant has the option to request a FDPA for elements other than the CDP elements from the Planning Commission for all or a portion of the CDP/FDP in accordance with the provisions set forth in Section 16-402 of the Zoning Ordinance with respect to the remaining elements.
- C. Pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance, minor modifications from the Final Development Plan (FDP) may be permitted as determined by the Zoning Administrator. The Applicant shall have the flexibility to modify the layouts shown on the FDP without requiring approval of an amended FDP provided such changes are in substantial conformance with the FDP as determined by the Zoning Administrator and do not increase the total number of dwelling units; decrease the setback from the peripheries; or reduce open space or landscaping.
- D. Advanced density credit shall be reserved as may be permitted by the provisions of Paragraph 5 of Section 2-308 of the Fairfax County Zoning Ordinance for all

eligible dedications described herein, or as may be required by Fairfax County, the City of Fairfax or VDOT at time of site plan approval.

2. **George Mason Boulevard Improvements.** The Applicant shall reconstruct the median to create a median break into the Property's new access points on George Mason Boulevard as shown on the CDP/FDP. Said improvements shall be in place prior to the issuance of the first Residential Use Permit ("RUP") for the eastern portion of the Property.
3. **Sidewalks and Trails.**
  - A. The existing trail and sidewalk along George Mason Boulevard shall remain as constructed. If the existing trail or sidewalk is damaged due to construction activities on the Property, it shall be replaced/repared. If, in the opinion of the Department of Public Works and Environmental Services ("DPWES"), the damage creates a hazard for pedestrians, the damage shall be repaired immediately. Otherwise needed repair or replacement shall occur prior to issuance of the last RUP on the Property.
  - B. The Applicant shall provide a comprehensive sidewalk system within the Property as generally shown on Sheet 6 of the CDP/FDP. Construction of sidewalks shall be concurrent with development activity on the Property.
4. **Private Streets.** Private streets on the Property shall be constructed of materials and depth of pavement consistent with that required by Section 7-502 of the Public Facilities Manual. Purchasers shall be advised in writing prior to entering into a contract of sale that the homeowners association ("HOA") shall be responsible for the maintenance of all private streets in the development. The homeowner association documents shall specify that the homeowner association is responsible for the maintenance of the private streets.
5. **Driveways.** All driveways shall be a minimum of 18 feet in length from the garage door to the sidewalk.
6. **Landscape Plan.** A conceptual landscape plan for the Property illustrating the plantings and other features to be provided is shown on Sheet 8 of the CDP/FDP. As part of the site plan submission, the Applicant shall submit to the Urban Forest Management Division (UFMD) of DPWES for review and approval a detailed landscape and tree cover plan which shall be generally consistent with the quality and quantity of plantings and materials shown on the CDPA/FDPA. The landscape plan shall be designed to ensure adequate planting space for all trees based on the requirements in the Public Facilities Manual. Streetscape treatments, street furniture and street lighting provided on the Property shall be similar to those provided on the City Application Property so as to create a consistent character and quality. Adjustments to the type and location of vegetation and the design of landscaped areas and streetscape improvements/plantings shall be permitted in consultation with DPZ, and as approved by UFMD.

7. **Tree Preservation.**

- A. For the purposes of maximizing the preservation of trees in tree save areas shown on the CDP/FDP, the Applicant shall prepare a tree preservation plan. The Applicant shall contract with a certified arborist or landscape architect (the "Project Arborist") to prepare a tree preservation plan to be submitted as part of the first site plan submittal and subsequent site plan submissions. The tree preservation plan shall be reviewed and approved by UFMD. The tree preservation plan shall seek to preserve the large oak tree located west of George Mason Boulevard as well as other trees on the periphery of the Property identified on the CDP/FDP for preservation. The tree preservation plan shall provide a tree inventory which includes the location, species, size, crown spread and condition rating percent of all trees 10 inches or greater in diameter, measured 4½ feet from the ground and located within twenty (20) feet of the limits of clearing and grading of the tree save areas shown on the CDP/FDP. The condition analysis shall be prepared using methods outlined in the latest edition of the *Guide for Plant Appraisal*. Specific tree preservation activities designed to maximize the survivability of trees designated for preservation shall be incorporated into the tree preservation plan. Activities should include, but are not limited to, crown pruning, root pruning, mulching and fertilization.. The tree care maintenance and preservation activities for the large oak shall begin during the pre-construction-start-up phase of the development and shall be specified on the tree preservation plan, at subdivision/site plan submission. Activities such as lightning protection, pruning, mulching and others may be necessary, and will be provided as required by the tree preservation plan.
- B. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fencing. Tree protection fencing, consisting of four foot high, 14 gauge welded wire attached to 6 foot steel posts driven 18 inches into the ground and placed no farther than 10 feet apart, shall be placed at the limits of clearing and grading as shown on the Phase I and Phase II erosion and sedimentary control sheets in all areas. The tree protection fencing shall be made clearly visible to all construction personnel. The tree protection fencing shall be installed prior to the performance of any clearing and grading activities on the site. All tree preservation activities, including installation of tree protection fencing, shall be performed under the supervision of the Project Arborist. Prior to the commencement of any clearing or grading on the site, the Project Arborist shall verify in writing that the tree protection fencing has been properly installed.
- C. Clearing, grading and construction shall conform to the limits of clearing and grading as shown on the CDP/FDP, subject to the installation of necessary utility lines and other required site improvements, all of which shall be installed in the least disruptive manner possible, considering cost and engineering, as determined in accordance with the approved plans. The Applicant shall have the limits of clearing and grading marked with a continuous line of flagging prior to the pre-construction meeting. The Applicant and Project Arborist shall walk the limits of clearing and grading with a UFMD representative to determine where adjustments

to the clearing limits can be made, or other measures implemented, such as the addition of mulch beds and/or small retaining walls to increase the survivability of trees at the edge of the limits of clearing and grading. Trees that are not likely to survive construction due to their proximity to disturbance shall also be identified at this time and the Applicant shall remove such trees as part of the clearing operation. Any tree that is designated for removal within a tree preservation area or at the edge of the limits of clearing and grading shall be removed using a chain saw to avoid damage to surrounding trees.

8. **Architectural Design.** The building elevations prepared by Devereaux and Associates shown on Sheets 16 through 19 of the CDP/FDP are provided to illustrate the architectural theme and design intent of the residential dwellings. The architectural design of the proposed dwellings shall generally conform to the character and quality of these illustrative elevations, but the Applicant reserves the right to modify these elevations and add architectural ornamentation based on final architectural design.

The building materials shall vary and may be a combination of brick, stone, and cementitious siding supplemented with trim and detail features. Dwellings shall incorporate a brick or stone watercourse on all facades visible from public or private streets. In other foundation areas not visible from public or private streets, concrete foundation walls may be utilized. The dwellings on the Property shall be similar to those to be constructed on the City Application Property so as to create a consistent character and quality.

9. **Universal Design.** Dwelling units shall be designed and constructed with a selection of Universal Design features and options as determined by the Applicant which may include, but not be limited to, seat in master bath shower where possible, emphasis on lighting in stairs and entrances, lever door handles, slip resistant flooring, optional hand-held shower heads at tubs and showers, optional front loading washers and dryers and rocker light switches.

10. **Energy Star Qualification.** The dwelling units shall be constructed to achieve qualification in accordance with ENERGY STAR® for Homes. Such qualification will be demonstrated by the submission of documentation to the Environment and Development Review Branch of DPZ from a home energy rater certified through the Residential Energy Services Network (RESNET) program which shows that each dwelling unit has attained the ENERGY STAR® for Homes qualification prior to the issuance of the RUP for each dwelling.

11. **Noise Study.** Prior to site plan submission, the Applicant shall provide a noise study for dwelling units along George Mason Boulevard to determine what, if any, noise attenuation measures may be needed. Such study shall be submitted to the Environment and Development Review Branch of DPZ for review. Based on the findings of that report, the Applicant shall identify units on the site plan that are anticipated to be impacted by noise greater than 65 dBA Ldn and shall provide noise attenuation measures designed to reduce interior noise of those identified noise impacted units to a level of approximately 45 dBA Ldn.

12. **Recreational Facilities.** Pursuant to Paragraph 2 of Section 6-110 and Paragraph 2 of Section 16-404 of the Zoning Ordinance regarding developed recreational facilities, the Applicant shall expend a minimum of \$1,700 per dwelling unit on on-site recreational facilities for the future residents of the Property. The specific facilities and amenities to be provided shall be determined at the time of site plan approval. Amenities to be provided may include, but not be limited to, benches/seating, picnic areas, outdoor fireplace, pergola/gazebo, outdoor dining, bike racks, and exercise stations. Prior to final bond release for the Property, the balance of any funds not expended on-site shall be contributed to the Fairfax County Board of Supervisors for use by the Fairfax County Park Authority for the provision of recreation facilities located in proximity to the Property.

13. **Stormwater Management.** Subject to review and approval by DPWES, stormwater management and Best Management Practice ("BMP") measures for the Property will be provided in off-site facilities on the George Mason University campus as generally described on the CDP/FDP pursuant to an agreement between the Applicant and George Mason University. The stormwater management and BMP measures may be provided on the George Mason University campus utilizing either option noted in the "SWM/BMP/Adequate Outfall Overall Narrative" set forth on Sheet 11 of 19 of the CDP/FDP, and as more fully described on Sheets 11, 12 and 13 of the CDP/FDP. In addition, the Applicant has identified the locations for two innovative BMP measures (rain gardens) on the CDP/FDP, which will be considered above and beyond the current PFM requirements. Other innovative BMP measures such as, but not limited to biofiltration swales may be substituted as determined by the Applicant and approved by DPWES. Any innovative BMP measures shall be maintained by the homeowners association in accordance with procedures established for innovative BMPs as determined by DPWES.

In the event, the off-site facilities on George Mason University are not available for use by the Applicant, the Applicant shall provide for alternative stormwater management and BMP measures to serve the Property. If the alternative stormwater management measures significantly affect the site design, the Applicant shall file a proffered condition amendment.

14. **Housing Trust Fund.** Prior to the issuance of the first building permit, the Applicant shall contribute to the Fairfax County Housing Trust Fund ("HTF") the sum equal to one-half percent (1/2%) of the value of all of the units approved at the time of site plan on the Property. The percentage shall be based on the aggregate sales price of all of the units subject to the contribution, as if all of those units were sold at the time of the issuance of the first building permit, and is estimated through comparable sales of similar type units. The projected sales price shall be proposed by the Applicant in consultation with the Fairfax County Department of Housing and Community Development ("HCD") and shall be approved by HCD.
15. **Public School Contribution.** Per the Residential Development Criteria Implementation Motion adopted by the Board of Supervisors on September 9, 2002, and revised July, 2006, the Applicant shall contribute \$9,378 per expected student (based on a ratio of

0.531 students per single family detached residential unit and 0.379 students per single family attached unit) to the Fairfax County School Board to be utilized for capital improvements to schools that any students generated by the Property will attend. Such contribution shall be made prior to the issuance of the first RUP for the Property and shall be based on the actual number of dwelling units built.

16. **Recreation Contribution.** At the time of the issuance of the first RUP on the Property, the Applicant shall provide a monetary contribution of \$50,000 to the Board of Supervisors for recreational opportunities as determined in consultation with the Braddock District Supervisor.
17. **Cultural and Heritage Resources.** For the purpose of recognizing relevant historic information for the former schools which were located on the Property, the Applicant shall fund the research, fabrication and installation of a Fairfax County historical marker in an appropriate location on the Property in an amount not to exceed \$3,000, provided such research is provided by the Historical Marker Committee of the County's History Commission ("HC") and a marker is deemed appropriate by the HC. The text to be included on the marker shall be provided to the Applicant by the HC.

If the HC determines upon evaluation of their completed research that a county historical marker is not warranted for the Property, then the Applicant shall have no other obligation under this Proffer.

18. **Homeowners Association.** The Applicant shall form a homeowners association ("HOA") for the Property. The HOA shall be responsible for maintenance for the common areas and the enforcement of restrictions on the Property. The Applicant shall notify all prospective purchasers in sales literature and purchasers in writing at the time of settlement of the split jurisdictional nature of the residential community, the location of a sewage pumping station on the Property, as well as HOA maintenance responsibilities and restrictions. Maintenance responsibilities shall include, but not be limited to, snow removal, private accessway/parking lot maintenance, on-site stormwater management facilities maintenance, and common area maintenance.
19. **Reciprocal Easements.** At the time of subdivision plan approval, the Applicant shall create reciprocal easements along common residential property lines to provide future homeowners with reasonable rights of access to adjacent lots if needed to perform routine home maintenance functions.
20. **Deck Enclosures.** Decks in rear yards, as conceptual shown on Sheet 15, of the CDP/FDP may be converted to porches (including screened in porches) or sunrooms.
21. **Use of Garages.** A covenant shall be recorded which provides that garages shall only be used for a purpose that will not interfere with the intended purpose of garages (e.g., parking of vehicles). This shall not preclude the use of garages as sales offices in the model homes during marketing of the development, with the understanding the sales offices will be converted back to garages upon sale of the models. The covenant shall be recorded among the land records of Fairfax County in a form approved by the County

Attorney prior to the sale of any lots and shall run to the benefit of the HOA and the Fairfax County Board of Supervisors. Purchasers shall be advised in writing of the use restriction prior to entering into contract of sale.

22. **Parking Covenant.** A covenant shall be recorded which prohibits the parking of motor homes, boats and other recreational vehicles on the Property. This covenant shall be recorded among the land records of Fairfax County in a form approved by the County Attorney prior to the sale of any lots and shall run to the benefit of the HOA and the Fairfax County Board of Supervisors.
23. **Split Jurisdiction Notification.** Purchasers shall be advised in writing prior to entering into a Contract of Sale that the proposed residential community is located partially within Fairfax County and partially within the City of Fairfax, and that the two jurisdictions provide different services to its residents, including, but not limited to, school assignments, trash collection, etc. The HOA documents shall include documentation of these jurisdictional differences.
24. **Adjustments in Contribution Amounts.** For all proffers specifying contribution amounts with the exception of Proffer 14 related to the Housing Trust Fund, the contribution shall adjust on a yearly basis from the base year of 2013 and change effective each January 1 thereafter, based on changes in the Consumer Price Index for all urban consumers (not seasonally adjusted) ("CPI-U"), both as permitted by Virginia State Code Section 15.2-2303.3.
25. **Sewage Pump Station.** The proposed sewage pump station shown on the CDP/FDP will be designed and constructed according to the requirements of the City of Fairfax Public Facilities Manual, which references the Virginia Administrative Code for Sewage Pump Stations (9VAC25-790-380), and in accordance with the Code of Virginia (Sect. 62.1-44.19) as reviewed and approved by the City of Fairfax and the Virginia Department of Environmental Quality in consultation with the DPWES.
26. **Temporary Signs.** No temporary signs (including "Popsicle" style paper or cardboard signs) which are prohibited by Article 12 of the Zoning Ordinance, and no signs which are prohibited by Chapter 7 of Title 33.1 or Chapter 8 of Title 46.2 of the Code of Virginia shall be placed on- or off-site by the Applicant or at the Applicant's direction to assist in the initial sale of homes on the Property. Furthermore, the Applicant shall direct its agents and employees involved in marketing and/or home sales for the Property to adhere to this proffer.
27. **Severability.** Any of these buildings within the Property may be subject to Proffered Condition Amendments and Final Development Plan Amendments without joinder or consent of the property owners of the other buildings.
28. **Successors and Assigns.** These proffers will bind and inure to the benefit of the Applicant and his/her successors and assigns.

29. **Counterparts.** These proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original document and all of which taken together shall constitute but one in the same instrument.

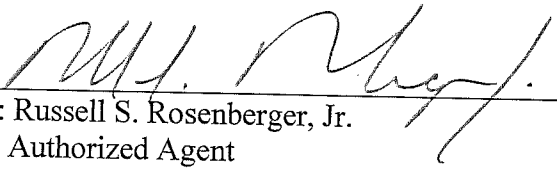
[SIGNATURES BEGIN ON NEXT PAGE]

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APPLICANT/CONTRACT PURCHASER OF  
TAX MAP 57-4 ((1)) 6

ELEVEN OAKS LLC

  
By: Russell S. Rosenberger, Jr.  
Its: Authorized Agent

[SIGNATURES CONTINUE ON NEXT PAGE]

TITLE OWNER OF TAX MAP 57-4 ((1)) 6

CITY OF FAIRFAX

A handwritten signature in cursive script, appearing to read "Robert L. Sisson", written over a horizontal line.

By: Robert L. Sisson

Its: City Manager

[SIGNATURES END]